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For attention: The Chairperson

Submission on ICASA's discussion paper on local loop unbundling

Government Gazette No. 34382 dated 22 June 2011 (Notice 409 of 2011) has bearing on this matter.

Background

Solidarity is one of the oldest trade unions in South Africa (SA). Its origins date back to 1902. Since its inception, Solidarity – and its predecessor, the Mine Workers' Union (MWU) – has been closely linked to the course of South African history. Solidarity currently represents 150 000 members in different industries. Thousands of these members are employed in the Information and Communication Technology industry (ICT), placing Solidarity in the midst of this debate on local loop unbundling (LLU).

Solidarity welcomes the release of the discussion document regarding the LLU by the Independent Communications Authority of SA's (ICASA), but finds the attempted ex-ante regulation premature.

Argument

ICASA Councillor Thabo Makhakhe made the following statements at a media briefing on 22 June 2011:

> The motivation behind the introduction of LLU is based on standard network economics where more users will generate more traffic and therefore reduce per units costs.
>
> [...] The goal of LLU is to ensure that access to existing infrastructure is achieved in a fair and equitable manner to ensure that, among others:
>
> - More people are connected to the internet through fixed line or other connections.
> - Consumers have more choice about who provides what service for fixed line connectivity.
> - Jobs in the industry are secure.
>
> [...] LLU, in the case of SA, also represents a revenue generation opportunity for all operators, including Telkom, which further supports both job retention and job creation.

Unfortunately, there is no adequate research to verify that LLU will, in fact, result in more competition in the market or lower prices. It is also unclear whether the demand for broadband is big enough to justify unbundling. With the introduction of mobile service providers (SPs), no significant cost reductions for consumers were introduced.

There is however emerging evidence that the sector may need less regulation in the form of retail price regulation and local loop unbundling, and better policy making and regulation in respect of spectrum allocation, in South Africa, at least in respect of the supply of broadband internet access services to residential and small office / home office (SOHO) customers.

There is at least some initial evidence that wireless technologies offer an alternative to fixed lines for residential and SOHO customers. While these products may not be perfect substitutes, and may not be in the same market for anti-trust purposes, the products probably are sufficiently substitutable to warrant lifting price regulations of these services. The evidence certainly suggests that scarce regulatory resources ought to be allocated to radio frequency spectrum allocation rather than cumbersome local loop unbundling and price regulation processes. (Local loop unbundling versus encouraging the growth of wireless local loops: lessons for South Africa from other countries – Ryan Hawthorne)

Further, to state that the proposal will generate more traffic, might be true, but for whom? It is common cause that LLU will apply to the existing local loops and therefore only end users in urban areas will be benefited by it. The majority of SA citizens do not have access to fixed-line communication. In 2009 only 17% of SA households had access to landlines. (Stats SA, General Household Survey 2009, 6 May 2010, p 118)

LLU will not narrow the digital divide between the “haves” and “have-nots”. The government’s 38% share in Telkom SA Ltd (Telkom) is surely contrary to the government’s objectives of universal broadband access for all.

It seems that part of the motivation for implementing LLU is that Telkom will, after it has been implemented, have a stronger incentive to expand infrastructure to areas where citizens currently have no access to fixed-line infrastructure. This possibility is extremely unlikely. In fact, LLU that causes revenue losses for Telkom will probably have the opposite effect.

LLU network access will be provided to SPs where infrastructure is already in existence. Telkom states that it invested more than R65 bn in its networks from 1991 to 2010. (Telkom Regulatory Department)

Solidarity is on record over potential job losses at Telkom: “The proposed LLU in its current form will result in an 80% decrease of income for Telkom and therefore undoubtedly lead to job losses.” (*ITWeb*, 31 May 2011 – “Jobs at stake with loop unbundling”)

> Telkom is the single biggest employer in the ICT sector with 23 247 full time employees (2011). Some of Telkom’s biggest competitors namely MTN (6 500 employees) and Vodacom (5 000 employees) would be beneficiaries of LLU. Telkom has already communicated to the Authority that the cost of implementing LLU and the net revenues foregone to competitors would substantially decrease Telkom’s operating model. This may leave Telkom with no alternative but to review its workforce size. According to Telkom, the cost of the LLU will range between R159 million to R850 million and will cause revenue losses of more than R466,4 million in the next 5 years. (Telkom Regulatory Department)

This while the President announced a five-year job creation plan in his State of the Nation Address of 2011.

A major concern for Solidarity is that LLU will also not necessarily generate employment opportunities in the telecommunication industry. Solidarity has observed that some SPs (especially

Telkom's competitors) sometimes opt to use foreign employees instead of South Africans to fill vacancies in South Africa. We are of the opinion that these employers should first consider SA citizens to fill these positions before headhunting foreigners to fill them.

Proposal

At this juncture, Solidarity believes that the proposal of IPStream (or Bitstream) access as an alternative for physical LLU is worth investigating, as it could deliver some of the benefits of LLU without many of the technical and practical drawbacks. Solidarity supports Telkom in its belief that the principle of open access, including access to the local loop and its equivalent in the broadcasting environment, should be equitable, that is, proportionately applied to **all** licensees in the communication industry, including networks providing mobile cellular services.

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